IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2688 OF 2004

Ashok N. Mody and Another ...Petitioners

Versus

The State of Maharashtra and Anr ...Respondents

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Mr. A.P. Mundargi, Counsel, Mr. Rajendra Sarwankar, Advocate a/w Mr. Tushar Tijoriwala and Ms. Sheetal Chhabria i/b M/s. Tijoriwala & Co. Advocate for Petitioners

Smt. Vijaya K. Mistry, Advocate for Respondent No.2.

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST JULY, 2005

P. C.:-

1. Heard both sides.

2. The petitioners have prayed for quashing of process issued against them in Criminal Case No.887/SS/2002 which is pending in the Court of learned Additional Chief Metropolitan Magistrate, 7th Court, Dadar, Mumbai. In the said case, process has been issued against the petitioners under Section 138 of Negotiable Instruments Act.

3. As far as the petitioner No.1 is concerned, the

learned advocate for the respondent No.2 i.e. original complainant states that the complainant does not wish to proceed against the petitioner No.1 i.e. Shri. Ashok N. Mody in any of the cases filed by the present complainant. The learned advocate for the respondent No.2 has further stated that the complainant has preferred an application before the learned Magistrate for dropping the name of petitioner No.1 from the proceedings. In view of this statement, the proceedings in relation to petitioner No.1 are quashed.

3. As far as the petitioner No.2 is concerned, it is the case of the respondent No.2 i.e. original complainant that he was in charge of the day to day affairs of the complainant and as such the process against him cannot be recalled or the procedings quashed.

4. As far as the petitioner No.2 is concerned, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, in my opinion the petitioner No.2 has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioner No.2 prefers revision

before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner No.2 to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. The learned advocate for the respondent No.2 i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Writ Petition is disposed of.

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